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April 5, 2002

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OUR FILE NO.
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APR 05 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton, Acting Secretary
Federal Communications Commission
C/o Vistronix, Inc.
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002

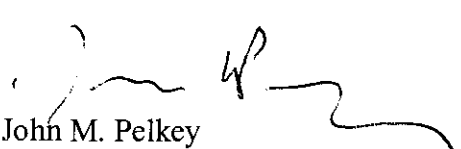
RE: Amendment of Section 73.202(b)
Table of Allotments
Alberta and Dinwiddie, Virginia,
Whitakers and Garysburg, North Carolina
MM Docket No. 00-245

Dear Mr. Caton:

Transmitted herewith on behalf of MainQuad Broadcasting, Inc., are an original and four copies of its **MOTION TO ACCEPT FURTHER COMMENTS AND FURTHER COMMENTS OF MAINQUAD BROADCASTING, INC.** in the above-referenced proceeding.

If there are any questions concerning this submission, please contact the undersigned directly.

Sincerely,


John M. Pelkey

Enclosure
JMP/blr

No. of Copies rec'd 014
List ABCDE

Before The
Federal Communications Commission
Washington, D.C. 20554

In the matter of]	
]	
Amendment of Section 73.202(b),]	MM Docket No. 00-245
Table of Allotments,]	RM-9971
FM Broadcast Stations,]	RM-10185
(Alberta and Dinwiddie, Virginia,]	RM-10186
Whitakers and Garysburg, North Carolina]	

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APR 05 2002

To: Chief, Allocations Branch

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**MOTION TO ACCEPT FURTHER COMMENTS
AND FURTHER COMMENTS OF MAINQUAD BROADCASTING, INC.**

MainQuad Broadcasting, Inc. ("MainQuad"), through counsel, hereby requests leave to file its Further Comments set forth below. These Further Comments are directly responsive to the "Response to Comments with Respect to Reply to Response to Order to Show Cause" (the "March 20 Response") submitted by Garysburg Radio on March 20, 2002. MainQuad has not been provided with an opportunity to comment upon the March 20 Response, which relies heavily upon a decision issued by the Commission on March 19, 2002, and which sets forth for the first time a revisionist view of Garysburg Radio's retraction of its unconditioned commitment to reimburse MainQuad for its expenses in changing WSMY-FM's channel and its commitment to provide first local service to Garysburg. Consequently, good cause exists for acceptance of these Further Comments inasmuch as such acceptance would allow the creation of a complete record with respect to these newly-raised issues. Consequently, MainQuad respectfully requests leave to file the following Further Comments:

On March 8, 2002, MainQuad pointed out in its Comments that the public interest would be ill-served if the WSMY-FM license were modified to specify operation on Channel 299. MainQuad explained in particular that its proposal would permit the provision of first local service to two communities, namely Garysburg, North Carolina, and Whitakers, North Carolina, whereas Garysburg Radio's proposal would permit first local service to be achieved only in Garysburg. In addition, MainQuad's proposal would permit 188,0344 people to receive additional service whereas the Garysburg Radio proposal would provide additional service to only approximately 61,000 people.¹ The

¹ In its March 20 Response, Garysburg Radio uses Census figures for the 2000 Census to compare the populations of Garysburg and Whitakers. Garysburg Radio, however, did not use 2000 Census data to similarly update the record with respect to the difference between the Garysburg Radio and MainQuad proposals as to the number of listeners who would receive additional service. To overcome that deficiency in the record, MainQuad commissioned engineer Frank White to determine the number of people contained within the 60 dBu contours of the proposed Garysburg and the proposed Whitakers facilities. Mr. White determined that, based upon the 2000 Census data, the proposed Garysburg facility would provide additional service to 61,131 persons, whereas the proposed Whitakers facility would provide additional service to 188,344 persons. Moreover, the Whitakers facilities would provide such additional service to 98,922 minorities, whereas Garysburg would provide additional service to only 31,793 minorities.

benefits of the MainQuad proposal are illustrated in the following table:

Proposal	MainQuad	Garysburg Radio
First local transmission service for Garysburg	Yes	Yes
Continued First Local Transmission Service for Alberta	Yes	Yes
First local transmission service for Whitakers	Yes	No
Creation of Class C facility on Channel 276 with concomitant service to 188,344 people (in excess of 127,000 people more than would be served by a Class A facility in Garysburg)	Yes	No
Fair reimbursement to MainQuad for Changing Channels	Yes	No

Further, MainQuad's Comments explained that Garysburg Radio had attempted to backtrack on its earlier commitment to reimburse MainQuad if WSMY-FM were required to change channels and was equivocating on its proposal that Channel 276 be allocated to Garysburg rather than Whitakers. Apparently smarting from this simple recitation of facts demonstrating that the MainQuad proposal is far superior to the Garysburg Radio proposal, Garysburg Radio now seeks to resuscitate its proposal by reliance upon a recent decision that actually supports MainQuad's position and by seeking to rationalize its backtracking on its earlier commitments. Garysburg Radio's efforts at resuscitation are in vain.

I. The Commission's Recent *Cumberland, Kentucky*, Decision Conclusively Demonstrates that the MainQuad Proposal is to be Preferred Over the Garysburg Radio Proposal.

Garysburg Radio heavily relies upon the staff's recent decision in *Cumberland, Kentucky, and Weber City, Virginia; Glade Spring, Marion, Richlands and Grundy, Virginia*, DA-02-620, released March 19, 2002 (the "*Cumberland*" decision"), for the proposition that its proposal should be preferred. Garysburg Radio's argument in this regard depends exclusively on the slightly larger population of Garysburg as compared to Whitakers. Garysburg Radio argues that this differential in population, although admittedly slight, has been used by the Commission in the past as the tie-breaking mechanism when each of two parties to a proceeding are proposing to provide first local service to a community.

Garysburg Radio's reliance upon *Cumberland* is, however, woefully misplaced. Garysburg Radio reads into *Cumberland* the proposition that, whenever two proponents are each proposing to provide first local service, the proponent proposing to serve the larger community always wins. Assuming that this reading is correct, however, it becomes clear that the MainQuad proposal – not the Garysburg Radio proposal – is to be preferred, for Garysburg Radio fails to acknowledge the fact that MainQuad has proposed to provide first local service both to Whitakers and Garysburg.² The MainQuad proposal

² MainQuad Communications, Inc., which is a MainQuad affiliate, has proposed to provide first local service to Garysburg by changing the community of license of WPTM(FM), a station of which MainQuad Communications, Inc., is licensee, from Roanoke Rapids, North Carolina, to Garysburg. Because the proposal does not require either a channel change or a change in transmitter site or other facilities to provide the requisite city-grade signal and because Roanoke Rapids has four other radio stations and one television station licensed to it, there is virtually no scenario under which that rulemaking would not result in the provision of first local service to Garysburg by WPTM(FM). In addition, MainQuad Communications, Inc., and MainQuad have committed to pursue that rulemaking through to conclusion as necessary to provide first local service to Garysburg. As a result, unlike situations where a party is relying upon a rulemaking

thus would provide first local service not only to the sole community that would receive such service under the Garysburg Radio proposal, but also to another community of nearly 1,000 persons that currently has no local service. As a result, the MainQuad proposal is clearly preferable.

Moreover, even if MainQuad were not proposing to provide first local service to both Whitakers and Garysburg, MainQuad's proposal would still be preferred. The staff's *Cumberland* decision is premised upon the Commission's decision in *Blanchard, Louisiana, and Stevens, Arkansas*, 10 FCC Rcd 9828 (Comm. 1995) (the "Blanchard" decision). The *Blanchard* decision was adopted by the Commission on July 31, 1995. On that very same day, the Commission also adopted its decision in *Seabrook, Huntsville, Bryan, Victoria, Kennedy and George West, Texas*, 10 FCC Rcd 9360 (Comm 1995), wherein the Commission found that the proposed provision of second full-time aural service to 455 persons (which normally triggers priority [2] of the Commission's FM priorities) would be considered to be *de minimis* in view of the fact that the competing proposal proposed additional service to 144,000 more persons than the proposal that would provide second full-time aural service to 455 persons. Because these two decisions were adopted by the Commission itself on the same day, they must be read in such a way as to harmonize with one another.³ The most harmonious reading is obvious: while the

involving facilities changes or involving unrelated parties, the MainQuad WPTM(FM) proposal is not premised upon a speculative proposal that may or may not come to fruition. Nevertheless, if the Commission has any questions as to whether the MainQuad proposal for WPTM(FM) will be adopted, MainQuad would suggest to the Commission that it defer action in the present proceeding until the WPTM(FM) rulemaking has been concluded.

³ It appears that in *Cumberland* no party raised a question as to whether the differential in populations receiving first local service was *de minimis* when compared to the number of people who would receive additional service. As a result, no mention of the *Seabrook* case is made in *Cumberland*. The staff, of course, could not ignore the *de minimis* concept inasmuch as the use of that concept was adopted and approved by the Commission.

proponent proposing the greater first local service will usually prevail, the differential between proponents in that regard can be so small as to be *de minimis* when other factors are taken into account. As MainQuad has pointed out in the past, that is precisely the situation we have in the present case.⁴ As a result, MainQuad's proposal would be preferable to Garysburg Radio's even if MainQuad were not proposing to provide first local service to *both* Whitakers and Garysburg.

II. The Garysburg Radio Proposal is Undermined by Garysburg Radio's Backtracking on its Previously Unconditioned Commitment to Pay MainQuad for its Expenses in Changing WSMY-FM's Channel.

Similarly unavailing is Garysburg Radio's attempt to rationalize its backtracking from its earlier commitment to reimburse MainQuad for its expenses in changing the channel on which WSMY-FM operates. Garysburg Radio now claims that it had all along intended that its commitment was conditioned on Garysburg Radio ending up with the authorization for Garysburg. The fact of the matter is, however, that Garysburg Radio's commitment was never so conditioned. In its Comments filed on January 29, 2001, Garysburg Radio, as part of its argument that Channel 276 should be allocated to Garysburg, pledged that "in the event that Channel 299A is substituted for Channel 276A, and the authorization for WAQD(FM) [the former call sign of WSMY-FM] is modified accordingly, Garysburg Radio will reimburse the permittee of WAQD(FM) for its reasonable expenses associated with the change in channel." Comments of Garysburg Radio at p.3. That is a direct quote from the Comments. The commitment was not conditioned in any way. In a like vein, the Commission, at paragraph 3 of its Order to

⁴ See, e.g., August 3, 2001, Reply Comments of MainQuad Broadcasting, Inc., at p. 3. Indeed, based upon the 2000 Census data, the present case and Seabrook present a virtually

Show Cause, explicitly stated that “Garysburg Radio has agreed to reimburse MainQuad for the reasonable costs incurred in connection with the change of the Station WSMY-FM channel.” No mention was made of any condition. It is now clear that Garysburg Radio is engaging in revisionist history. Garysburg Radio wants to have it both ways. It wants to force MainQuad to change channel, but it no longer wishes to pay MainQuad for the expenses incurred in changing channel.

III. Garysburg Radio Continues to Equivocate on its Commitment to Garysburg.

In its Comments, MainQuad pointed out that, not only was Garysburg Radio backtracking on its earlier commitment to reimburse MainQuad, but it was also equivocating on its proposal for the establishment of a new service to serve Garysburg. In particular, MainQuad noted Garysburg Radio’s statement that “[i]f the WSMY-FM license were modified to Channel 299A, then Channel 276A would be available for allotment at either Garysburg or Whitakers” and queried whether Garysburg Radio was still advocating the allocation of Channel 276A to Garysburg or had abandoned that proposal in favor of using Garysburg as a way station for the eventual allocation of Channel 276 to Whitakers. MainQuad Comments at pp. 4 - 5. In its March 20 Response, Garysburg Radio continues the suspense. Thus, at paragraph 9 of its March 20 Response, it states: “ [w]hile Garysburg Radio now once again affirms that it believes greater public interest benefits would be achieved through the proposed Garysburg allotment, it remains an unavoidable fact that the modification of the WSMY-FM allotment would allow for the allotment of Channel 276 at either Whitakers or Garysburg as a new allotment of a first local broadcast service.” The very ambiguity of this double-speak makes it clear that

identical factual situation.

Garysburg Radio's proposal is a chimera. It is not a proposal. It is mere gamesmanship calculated to prevent the citizens of Whitakers from enjoying first local service along with the citizens of Garysburg and Alberta. The Commission should not countenance Garysburg Radio's continued efforts to prevent MainQuad from serving the public. The Garysburg Radio proposal should be viewed for what it is – an effort by an entrenched broadcaster to forestall competition.

Conclusion

It is now clear beyond cavil that the MainQuad proposal is to be preferred. It provides first local service to more people. It provides additional received service to more people. It allows for the residents of Alberta to continue to receive first local service. It allows the citizens of Garysburg to receive first local service more quickly. It is in all respects a proposal that better serves the Commission's allotment priorities. As a result, the Commission should expeditiously adopt the MainQuad proposal.

Respectfully submitted,

MAINQUAD BROADCASTING, INC.

By: 
John M. Pelkey

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April 3, 2002

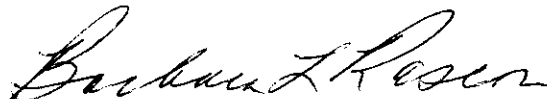
CERTIFICATE OF SERVICE

I, Barbara L. Rascon, a secretary in the law offices of Garvey, Schubert & Barer, hereby certify that I have on this 5th day of April, 2002, sent copies of the enclosed **MOTION TO ACCEPT FURTHER COMMENTS AND FURTHER COMMENTS OF MAINQUAD BROADCASTING, INC.** by hand-delivery or First Class, United States mail, postage prepaid, to the following:

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Barbara L Rascon

*Hand Delivery
April 5, 2002